

## **COUNTY OF FAIRFAX, VIRGINIA**

### **SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

KELLY L. BATIE, SP 2010-LE-007 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.4 ft. from side lot line and 6.8 ft. from rear lot line, to permit roofed deck to remain 8.8 ft. from a rear lot line and to permit fence greater than 4.0 ft. in height to remain in a front yard. Located at 8134 Norwood Dr. on approx. 11,861 sq. ft. of land zoned R-3. Lee District. Tax Map 101-2 ((3)) 3. Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 31, 2010; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The applicant has presented testimony indicating compliance with Sect. 8-914, Provisions for Approval of Reduction to Minimum Yard Requirements Based on Error in Building Location.
3. The non-compliance was done in good faith, having been done by a former owner of the property, and which the applicant had no knowledge when he bought the property.
4. Although the structure is a little close to the side lot line, it is there; and, it is not seen to be detrimental to the use and enjoyment of other property in the immediate area, which is an important criterion.

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This special permit is approved for the location of an existing detached accessory structure (frame garage/workshop), roofed deck (wood deck) and fence as shown on the plat prepared by Scartz Surveys, dated August 20, 2009, and signed through December 22, 2009, submitted with this application and is not transferable to other land.
2. Within 120 days of approval of this application, all applicable permits and final inspections shall be obtained for the detached accessory structure (garage/workshop) or the structure shall be removed or brought into compliance with Zoning Ordinance requirements.
3. Within 120 days of approval of this application, all applicable permits and final inspections shall be obtained for the roofed deck (wood deck) or the structure shall be removed or brought into compliance with Zoning Ordinance requirements.
4. The accessory structure shall not be converted into livable space.
5. Notwithstanding what has been depicted on the plat, the applicant shall reduce the height of the fence on the wood deck to meet Zoning Ordinance requirements.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Smith seconded the motion, which carried by a vote of 6-0. Ms. Gibb was absent from the meeting.